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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lake Norman Chrysler-Plymouth-Dodge, Inc.

Serial No. 74/628,372

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Lake Norman Chrysler-Plymouth-Dodge, Inc.

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(David Shallant, Managing Attorney).

Before Cissel, Quinn and Hohein, Administrative Trademark Judges.
Opinion by Hohein, Administrative Trademark Judge:

Lake Norman Chrysler-Plymouth-Dodge, Inc., located in
Cornelius, North Carolina, has filed an application to register
the mark "THE TRUCK CENTER OF THE SOUTH" for "vehicle dealership
services".¹

Registration has been finally refused under Section
2(e)(2) of the Trademark Act, 15 U.S.C. §1052(e)(2), on the
ground that, as applied to applicant's services, the mark "THE

¹ Ser. No. 74/628,372, filed on February 1, 1995, which alleges dates
of first use of October 1994.

TRUCK CENTER OF THE SOUTH" is primarily geographically descriptive of them.

Applicant has appealed. Briefs have been filed and an oral hearing was held. We affirm the refusal to register.

As a general proposition, in order for registration of a mark to be properly refused on the ground that it is primarily geographically descriptive of an applicant's goods or services, it is necessary to establish that (i) the primary significance of the mark is that of the name of a place generally known to the public and (ii) that the public would make a goods/place or services/place association, that is, believe that the goods or services for which the mark is sought to be registered originate in that place. *See, e.g.,* University Book Store v. University of Wisconsin Board of Regents, 33 USPQ2d 1385, 1402 (TTAB 1994); and In re California Pizza Kitchen Inc., 10 USPQ2d 1704, 1705 (TTAB 1988), *citing* In re Societe Generale des Eaux Minerales de Vittel S.A., 824 F.2d 957, 3 USPQ2d 1450, 1452 (Fed. Cir. 1987). Provided that these conditions are met, and the goods or services come from the place named by or in the mark, the mark is primarily geographically descriptive.

Moreover, where there is no genuine issue that the geographical significance of a term is its primary significance, and where the geographical place named by the term is neither obscure nor remote, a public association of the goods or services with the place may ordinarily be presumed from the fact that the applicant's goods or services come from the geographical place named in the mark. *See, e.g.,* In re California Pizza Kitchen

Inc., supra; and In re Handler Fenton Westerns, Inc., 214 USPQ 848, 850 (TTAB 1982). In addition, the presence of generic or highly descriptive terms in a mark which also contains a primarily geographically descriptive term does not serve to detract from the primary geographical significance of the mark as a whole. See, e.g., In re Cambridge Digital Systems, 1 USPQ2d 1659, 1662 (TTAB 1986); and In re BankAmerica Corp., 231 USPQ 873, 875 (TTAB 1986).

Applicant, in its initial brief, states that it "is a vehicle dealership that sells trucks, vans, conversion vans, minivans and automobiles to the public." While admitting that it "is located in Cornelius, North Carolina, which is near Lake Norman and Charlotte, North Carolina," applicant contends that the mark "THE TRUCK CENTER OF THE SOUTH" is not primarily geographically descriptive of its services because "only one component of the overall mark is [even] arguably geographic in nature" and, applicant maintains, that component, namely, the words "THE SOUTH," does not form the dominant portion of its mark. Applicant consequently insists, in light of the word "primarily" in the statutory prohibition of Section 2(e)(2), that "[a] mark cannot be primarily geographically descriptive where, as here, a part of the mark that is admitted [by the Examining Attorney] to be of at least equal prominence to the alleged geographically descriptive term is not in any way geographically descriptive." Applicant, however, notably fails to cite any case law or other authority to support its position, which is plainly contrary to one of the general principles mentioned above.

Applicant also contends, in any event, that the Examining Attorney has not established that the phrase "TRUCK CENTER" is merely descriptive of applicant's services and hence, when combined with the geographical component formed by the words "OF THE SOUTH," results in a primarily geographically descriptive mark. Specifically, viewing the mark "THE TRUCK CENTER OF THE SOUTH" in a vacuum and not in relation to the meaning which such mark would have when used in connection with vehicle dealership services,² applicant argues that:

"Truck Sales Center" might be a more descriptive or generic recitation of the services, but the component of the mark at issue, "Truck Center", could be associated with any number of different services related to trucks, such as might be found at a truck stop or a truck maintenance or repair facility. At best, "Truck Center" is suggestive of the services offered by Applicant, in that it would take a degree of imagination to connect "Truck Center" with vehicle dealership services, and not with one of the many other possible uses of the mark.

² It is well settled that a term or phrase is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary, however, that a term or phrase describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term or phrase describes a significant attribute or idea about them. Moreover, whether a term or phrase is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term or phrase would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." *In re American Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

Applicant, in this regard, further asserts that "the Examining Attorney's submission of evidence, in the form of a very abbreviated printout of a search conducted on the NEXIS database, confirms Applicant's contentions, and is insufficient to establish the descriptiveness of 'Truck Center' for vehicle dealership services." In particular, applicant observes that rather than demonstrating, as asserted by the Examining Attorney, that "many" truck dealerships use the phrase "TRUCK CENTER" in their names, the results of the "NEXIS" search show only nine examples in which such phrase is used "in clear correlation to dealership services." According to applicant, that fact, as well as the further facts that many excerpts lack meaningful context or utilize the phrase "TRUCK CENTER" to refer to such services as truck stop services or tow truck services, serve to "confirm Applicant's contention that the term 'Truck Center' has many other potential uses such that the term does not readily convey the offering of vehicle dealership services, and is thus at least suggestive of the services." Similarly, applicant maintains that the Examining Attorney's citation of a dictionary definition of the word "center" as meaning "a place of concentrated activity" does not establish that purchasers and prospective customers would regard such term in applicant's mark as anything other than a suggestive appellation for applicant's dealership services.

Applicant also urges that, "while the terms 'the' and 'of' do not have any independent trademark significance, they do contribute to the overall commercial impression given by the mark 'The Truck Center Of The South', and their presence in the mark

require[s] that more than just a simple analysis of the terms 'South' and 'Truck Center' be conducted, as they contribute to determining the overall prominence and meaning of those terms in the composite mark." In essence, applicant contends that "[t]he term 'Of The South' does not carry the same connotation as would the descriptive phrase 'in the South'," and thus the overall commercial impression of its "THE TRUCK CENTER OF THE SOUTH" mark is that of a unitary slogan which is not primarily geographically descriptive of applicant's vehicle dealership services. Rather, as stated in its reply brief, applicant maintains that the "mark suggests or implies to the consumer that the vehicle dealership has some distinction that applies beyond its physical location."

Lastly, applicant asserts in reply that, while the Examining Attorney made of record a definition which defines the word "south," in relevant part, as connoting "[t]he southern part of the United States, esp. the states that fought for the Confederacy in the Civil War," such term lacks a geographical significance when used in the context of applicant's mark. Instead, applicant contends, while the term "The South" may have at one time "loosely connoted the states that seceded to the Confederacy, the term survives today in the context of the war not as a separate grouping of states within defined geographic boundaries, but primarily as [indicating] the issues for which the Confederacy stood." Therefore, according to applicant, "'The South' cannot be presumed to automatically give rise to primarily a geographic significance, and the Examining Attorney's evidence fails to establish that to be the case."

The Examining Attorney, on the other hand, argues that "it is not necessary" for the geographical component of a mark "to appear first in order for a mark to be primarily geographically descriptive," nor need such a term otherwise form the dominant portion of a mark, citing *In re Wine Society of America Inc.*, 12 USPQ2d 1139, 1142 (TTAB 1989) [affirming refusal to register "THE WINE SOCIETY OF AMERICA" for "wine club membership services" since "the mark as a whole is primarily geographically descriptive of applicant's services"] and *In re BankAmerica Corp.*, supra [holding "BANK OF AMERICA" for "computerized financial data processing services" to be primarily geographically descriptive thereof]. Thus, according to the Examining Attorney, "[t]he fact that 'of the South' follows 'The Truck Center' in applicant's mark does not diminish the primarily geographical nature of the mark."

Moreover, the Examining Attorney insists that, as used in applicant's mark:

"The South" is commonly understood as the southeast portion of the United States, especially the states that fought for the Confederacy in the Civil War. As with "Truck Center," the fact that "South may have other meanings in other contexts does not lessen its geographical descriptiveness in applicant's mark.

Case law has held that terms identifying other broad areas of the United States are primarily geographically descriptive. "Midwest" was held geographically descriptive in *In re Mid-West Abrasive Co.*, [146 F.2d 1011,] 64 USPQ 400 (CCPA 1945) and *In re Southland Corp.*, [] of Dallas, Texas, 162 USPQ 465 (TTAB 1969). Similarly, "Southwest was referred to as geographically descriptive in *In re Allied Equipment Co.*, 197 USPQ 838

(TTAB 1977). Like these words which identify large regions of the United States, "South" (particularly "the South") identifies a specific geographical area.

Consequently, the Examining Attorney maintains that, inasmuch as the geographical significance of the phrase "THE SOUTH" is its primary significance, and since the area delineated by such phrase is neither remote nor obscure, a public association may be presumed from the fact that applicant's services originate from that area, given that the words "TRUCK CENTER" are merely descriptive of applicant's services.

Specifically, as shown by consideration of both the previously noted dictionary definition of the term "center" and the pertinent "NEXIS" excerpts demonstrating use of the words "truck center" in connection with the retail selling of trucks, the Examining Attorney asserts that, to purchasers and potential customers of applicant's services, "it requires no imagination to determine the meaning of 'Truck Center' when used in conjunction with vehicle dealership services." A representative sample of such excerpts is reproduced below (**emphasis added**):

Richard Giza, ... who had operated Economy Car and **Truck Center** ..., was named March 4 in a 143-count indictment -- Buffalo News, February 10, 1996 (article headlined: "FORMER USED CAR AND **TRUCK DEALER** PLEADS GUILTY TO FORGERY");

Badger **Truck Center** Inc., a Milwaukee **truck dealership** -- Milwaukee Journal Sentinel, October 31, 1995 (article headlined: "FORD NAMES 2 STATE **DEALERS**");

[O]wner Pat Norris thinks he has found a solution: the Norris Auto Mall Used Car and **Truck Center**.

The **center**, opening Nov. 1, will be just west of the **dealership's** Dodge showroom

....

To make room for the Used Car and **Truck Center**, Norris purchased an adjacent 1.5 acres . . . ["to give] customers even more room to comfortably shop for whatever vehicle they want," he said.

The Auto Mall Used Car and **Truck Center** will feature quality pre-owned **vehicles**, Norris said. -- Plain Dealer, October 15, 1995 (article headlined: "NORRIS ADDS SPACE FOR GROWING USED CAR, **TRUCK BUSINESS**");

Inland **Truck Center** sold Volvo **trucks** and GMC delivery trucks, Anderson says. Last week, Northland Peterbilt began selling those lines at N910 Theirman, where Inland Truck Center had operated. The **dealership** there has been renamed Northland **Truck Center**, he says. -- Journal of Business-Spokane, October 12, 1995; and

Bull Bash promotions begin today at Dennis Dillon Auto Park and **Truck Center**
-- Idaho Statesman, September 28, 1995.

We agree with the Examining Attorney that, when considered in its entirety, the mark "THE TRUCK CENTER OF THE SOUTH" projects a primarily geographical connotation when used in connection with the vehicle dealership services offered by applicant from its place of business in Cornelius, North Carolina. Unlike the term "DIXIE," which was held in *In re Dixie Insurance Co.*, 223 USPQ 514, 516-17 (TTAB 1984) not to be primarily geographically descriptive of "property and casualty underwriting services" in view of numerous other non-geographical meanings for such term,³ the word "SOUTH" in applicant's mark has been shown, in light of the dictionary definition thereof, to

³ Although not cited in either of its briefs, applicant relied upon the *Dixie Insurance* case at oral argument to further support its position.

have as its sole pertinent connotation the region or geographical area consisting of "[t]he southern part of the United States, esp. the states that fought for the Confederacy in the Civil War". Applicant's speculative assertion that such term, when used as part of the phrase "THE SOUTH," would presently be identified "not as a separate grouping of states within defined geographic boundaries, but primarily as [indicating] the issues for which the Confederacy stood" is not only unsupported, but its own advertisement (reproduced in relevant part in reduced size immediately below),

which it submitted as specimens of use of its mark, prominently depicts a representation of such area directly beneath the words "The South" along with an eye-catching arrow pointing to applicant's location. In light of such presentation, and since we judicially notice that, for instance, The Random House Dictionary of the English Language (2d ed. 1987) at 1824 defines "the South" as "the general area south of Pennsylvania and the Ohio River and east of the Mississippi, consisting mainly of those states that formed the Confederacy,"⁴ there simply is no doubt that, not only is "THE SOUTH" the name of a place generally known to the purchasing public, but when viewed in the above context, the phrase "OF THE SOUTH" in applicant's "THE TRUCK CENTER OF THE SOUTH" mark primarily conveys a geographical significance in relation to applicant's services.

This conclusion, furthermore, is not diminished or otherwise altered by the presence in applicant's mark of the merely descriptive, if not generic, phrase "TRUCK CENTER," which as sufficiently demonstrated by the dictionary definition of "center" and the pertinent "NEXIS" excerpts of record pertaining to such phrase, conveys forthwith, as used in connection with vehicle dealership services, a dealership which (among other things) concentrates its activities on the sale and leasing of

⁴ It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

trucks. While, as applicant asserts, the "NEXIS" excerpts also show other meanings for the phrase "TRUCK CENTER," the Examining Attorney correctly points out that the fact that a phrase may have different meanings in other contexts is not controlling on the question of descriptiveness. See, e.g., In re Bright-Crest, Ltd., supra. Plainly, when viewed in the context of applicant's advertising, there is nothing in the phrase "TRUCK CENTER" which is ambiguous, incongruous, indefinite or too abstract, nor would any imagination, cogitation, mental processing or gathering of further information be necessary in order for consumers interested in applicant's vehicle dealership services to perceive precisely the descriptive significance of such phrase. Moreover, even if the presence of the word "THE" in applicant's mark may be regarded as conveying to some purchasers or potential customers of applicant's services a notion or element of distinction among truck centers, it remains the case that the mark "THE TRUCK CENTER OF THE SOUTH" immediately conveys, without any speculation or conjecture, that applicant claims to be the preeminent dealership in the South. As such, applicant's mark still projects a primarily geographically descriptive connotation.

The Examining Attorney's having satisfactorily established that the primary significance of applicant's mark is geographical in that it serves to name a truck center dealership located in the South, we further concur with the Examining Attorney that the purchasing public would make a services/place association. Applicant, we observe, does not contend to the

contrary. We note, in any event, that regardless of whether it can be presumed, in light of our finding that the geographic significance of the mark is its primary significance and the fact that the South is neither an obscure nor remote location, that the purchasing public would believe that the vehicle dealership services for which applicant seeks to register its "THE TRUCK CENTER OF THE SOUTH" mark originate in the South, it is common knowledge that vehicle dealerships are located throughout the United States, including the South. The purchasing public, therefore, would readily make a services/place association upon encountering the mark in connection with the vehicle dealership services rendered by applicant under such mark. Consequently, and inasmuch as those services come from the South, the mark "THE TRUCK CENTER OF THE SOUTH" is primarily geographically descriptive of applicant's vehicle dealership services within the meaning of the statute.

Decision: The refusal under Section 2(e)(2) is affirmed.

R. F. Cissel

T. J. Quinn

G. D. Hohein
Administrative Trademark Judges,
Trademark Trial and Appeal Board